

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MISTER SOFTEE, INC., et al.,

Plaintiffs,

-v-

No. 14 Civ. 1975 (LTS)(RLE)

DIMITRIOS TSIRKOS,

Defendant.

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PRELIMINARY INJUNCTION ORDER

For the reasons stated in the Memorandum Opinion entered on this date,

(A) Defendant Dimitrios Tsirkos (“Defendant”), his officers, agents, servants, employees, and attorneys; and other persons who are in active concert or participation with Defendant who receive actual notice of this injunction, are hereby enjoined, pending final resolution of this action, as follows:

(1) Defendant is enjoined from unlawfully using Plaintiffs’ federally registered trademarks or any names or marks confusingly similar to the Plaintiffs’ trademarks, including but not limited to the “Master Softee” and “Soft King” marks and trade dress as depicted in the photographs appended hereto;

(2) Defendant is further enjoined from, directly or indirectly, owning, maintaining, engaging in, being employed by, lending money to, extending credit to, or having any interest in any other business which operates or licenses businesses featuring primarily the retail sale of ice cream or other frozen confections within Defendant’s former territories, to wit:

a. Astoria, New York: Northern boundary - Hoyt Avenue to Astoria Boulevard,

Southern boundary - 30th Street, Eastern boundary - Steinway Street and Western

boundary - the Hudson River;

b. Manhattan: Northern boundary - 62nd Street, Southern boundary - 60th Street, Western boundary - 8th Avenue and Eastern boundary - 6th Avenue;

c. Manhattan: Northern boundary - 60th Street, Southern boundary - 59th Street, Eastern boundary - 6th Street and Western boundary - Central Park;

d. Manhattan: Northern boundary - 58th Street, Southern boundary - 56th Street, Western boundary - West Side Highway and Eastern boundary 6th Avenue;

e. Manhattan: Northern boundary - 60th Street, Southern boundary - 58th Street, Western boundary - West Side Highway and Eastern Boundary - 8th Avenue;

f. Manhattan: Northern boundary - 62nd Street, Southern boundary 60th Street, Eastern boundary - 8th Avenue and Western boundary - West Side Highway;

g. Northern boundary - 60th Street, Southern boundary - 58th Street, Western boundary - 8th Avenue and Eastern boundary - 6th Avenue;

(3) Defendant is further enjoined from directly or indirectly, owning, maintaining, engaging in, being employed by, lending money to, extending credit to, or having any interest in any other business which operates or licenses businesses featuring primarily the retail sale of ice cream or other frozen confections in Mister Softee franchisee territories that are within five miles of Defendant's former franchise territories;

(4) Notwithstanding any other provision of this order, paragraphs (A)(2) and (A)(3) of this Preliminary Injunction Order shall expire no later than February 18, 2016;

(B) Defendant, his officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with Defendant who receive actual notice of this order, shall return to Plaintiffs all labels, signs, prints, packages, wrappers, receptacles, and advertisements in their possession bearing the word and/or symbol that is the subject of

Plaintiff's trademarks, trade dress, or trade name violation or reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same pursuant to 15 U.S.C. § 1118, including all MSI Mister Softee decal packages, music boxes that play the Mister Softee jingle, and Mister Softee menu boards; and

(C) Notwithstanding any other provision of this Order, continuation of this preliminary injunction after 4 p.m. on June 11, 2014, shall be conditioned upon Plaintiffs having filed, at or before that time, a bond or a cashier's or certified check payable to the Clerk of this Court in the amount of \$50,000 to indemnify Defendant against any loss or damage suffered by him as a consequence of the entry of this preliminary injunction in the event that said injunction ultimately proves to have been erroneously granted. The Clerk of the Court shall deposit such amount into the Registry of this Court.

This Order resolves docket entry no. 14

SO ORDERED.

Dated: New York, New York  
June 5, 2014

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

# Appendix

# **Mister Softee Exhibits**



























# **Master Softee Exhibits**





*Softies*



*Master*

# **Soft King Exhibits**





Deft Exhibit PID  
5-28-2014 4:06pm(R)





Def Exhibit PIC  
5-28-2014 4:06pm